



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wright Tool Company

File: B-223821

Date: August 21, 1986

DIGEST

1. Bid on a total small business set-aside which indicates that all supplies to be furnished will not be the product of small businesses must be rejected as nonresponsive because the bidder otherwise would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside. Bidder may not rely on post-bid-opening explanation to make its nonresponsive bid responsive.

2. Protest challenging total small business set-aside invitation for bids (IFB) on ground that the specifications call for a component available only from a large business concerns alleged impropriety apparent on the face of the IFB and thus is untimely where not filed before bid opening.

DECISION

Wright Tool Company protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA09-86-B-0021, issued by the Army for hydraulic pump kits. We dismiss the protest.

The IFB, a total small business set-aside, contained the standard Small Business Concern Representation provision set forth in Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.219-1 (1985). In its bid Wright stated that it was a small business concern, but also indicated that not all the supplies to be furnished would be manufactured or produced by a small business concern. As a result, the Army rejected Wright's bid as nonresponsive.

A responsive bid is one that if accepted by the government as submitted, will obligate the contractor to perform the exact thing called for in the solicitation. See FAR, 48 C.F.R. § 14.301(a); J.G.B. Enterprises, Inc., B-219317.2, July 31, 1985, 85-2 CPD ¶ 109. The certification concerning a bidder's obligation to furnish products manufactured or produced by a small business concern is a matter of bid responsiveness because it involves a performance commitment by the

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bidder. J.G.B. Enterprises, Inc., B-219317.2, supra. Where a bid on a total small business set-aside fails to establish the bidder's legal obligation to furnish supplies manufactured or produced by a small business concern, the bid is nonresponsive and must be rejected; otherwise, a small business contractor would be free to provide the supplies from either small or large businesses as its own business interests might dictate, thus defeating the purpose of the set-aside program. ATD-American Co., B-217290, Jan. 23, 1985, 85-1 CPD ¶ 91.

Here, Wright states that it indicated in its bid that not all the supplies to be furnished would be manufactured or produced by a small business concern because the hydraulic pump specified in the IFB, one of the components of the hydraulic pump kits being acquired,^{1/} is available only from a large business concern. In so doing, Wright acted on a misinterpretation of the Small Business Concern Representation provision in the IFB.

As noted above, the provision required bidders to indicate whether "all supplies to be furnished will be manufactured or produced" by a small business concern; the IFB defines "supplies" as the "end items to be furnished under this solicitation." The IFB thus indicates that the small business certification extends only to the end items to be furnished, in this case, the hydraulic pump kits. Wright apparently misinterpreted the provision, however, and concluded that the "supplies" referred to in the provision included the component parts of the end items to be furnished, specifically, the hydraulic pump component of the hydraulic pump kit being acquired. While Wright's explanation is credible, bid responsiveness must be determined only from material available at bid opening; a bidder may not correct a nonresponsive bid through a post-bid-opening explanation. Ginter Welding, Inc., B-218894, May 29, 1985, 85-1 CPD ¶ 612. Accordingly, since Wright's bid indicated that not all the supplies to be furnished would be manufactured or produced by a small business concern, the bid was properly rejected as nonresponsive. Id.

Wright also contends that the specifications in the IFB were defective to the extent that they called for a hydraulic pump available only from a large business. Such a challenge to alleged improprieties apparent on the face of an IFB must be

^{1/} The hydraulic pump kits consist of hydraulic pumps and other components such as funnels, rules, hoses, and adapters, which are assembled to produce the end item kits.

filed before bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1986). Here, bid opening was on March 4, 1986, but Wright's protest was not filed until August 4. Accordingly, this ground of protest is untimely and will not be considered. Dial One Interthermal, B-220382, Oct. 31, 1985, 85-2 CPD ¶ 499.

The protest is dismissed.

A handwritten signature in cursive script, reading "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel